U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE A. GRANT and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

Docket No. 96-2515; Submitted on the Record;
Issued October 20, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on July 24, 1995.

On July 25, 1995 appellant, then a 47-year-old regular mailhandler, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on July 24, 1995 she sustained a lower abdominal pull and bleeding in the performance of duty. Appellant related that "[u]pon exiting [an office], I used my right hand, closing the door behind me and Sup[ervisor] Chancellor left her desk and grab[bed] hold of the door pulling me backwards and then closed the door [with] force." Appellant stopped work on July 26, 1995.

In a statement accompanying the claim, Ms. Chancellor related that she walked by appellant and entered the office of Ms. Tijuana King, appellant's supervisor. Ms. Chancellor stated that appellant also entered the office and accused her of slamming a door in her face. Ms. Chancellor stated that Ms. King, who was also in the office, asked appellant to return in about 15 minutes. Ms. Chancellor stated:

> "[Appellant] turned and walked toward the door. She opened the door with her left hand and as she exited the room she grabbed the outside handle to pull the door close[d]. I was approaching the door at the same time with the intent to insure that the lock switch was in place. [Appellant] did not fully close the door. She left space in the door of about 12 inches. As she released the handle of the door and stepped away I grabbed the handle and proceeded to close the door."

Ms. Chancellor related that later that morning a coworker informed her that appellant stated that she had injured her "jerking the door away from her," but that when she questioned appellant at that time she did not want to file a claim form.

In another statement accompanying the claim, Ms. King related that appellant entered her office and accused Ms. Chancellor of slamming the door in her face. Ms. King stated that she asked appellant to return in about 15 minutes and further stated:

> "[Appellant] turned to exit the office as she exited she commented again about Ms. Chancellor slamming the door, how unprofessional she thought it was. [Appellant] continued as she began to exit the door. Ms. Chancellor made contact with the door before it was completely closed. She glanced out and then proceeded to close the door."

Ms. King stated that when appellant did not come to her office she went to look for her and found her on the phone requesting a doctor's appointment "because a supervisor had jerked the door and she was having pain in her stomach." She stated that appellant informed her that she had pain and bleeding due to Ms. Chancellor having "deliberately slung the door open when she was closing it." Ms. King related that she told appellant that Ms. Chancellor did not sling the door open and that appellant told her that "it seemed like Ms. Chancellor had slung the door hard." Ms. King stated that appellant refused to file a claim at that time.

In an investigative memorandum dated July 25, 1995, Ms. King stated that she was in the office at the time of the alleged injury and further related:

> "There was no observation of the door being slung by [Ms.] Chancellor. Upon my entering the office at 10:10 [appellant] was on the telephone explaining that she needed an appointment because a supervisor had jerked the door open and she was having pain in her stomach. At 10:40 [appellant] along with shop stewart Lowe informed me that [appellant] was having stomach pain and bleeding because Ms. Chancellor deliberately slung [] the door open when she was closing it. At this time I replied, 'Ms. Chancelor did [not] sling the door."

In a report dated July 25, 1995, Dr. Mark Newman treated appellant for vaginal bleeding and abdominal pain and diagnosed an abdominal strain with a prior history of pathology. Dr. Newman stated that appellant related that she was injured holding onto a door knob when "a supervisor pulled the door open rapidly" which pulled her arm and caused abdominal pain and bleeding. Dr. Newman further noted that appellant had received treatment for cervical cancer in January 1994 with radiation and chemotherapy. Dr. Newman found that the incident described by appellant was a pulled shoulder and would not cause abdominal pain or bleeding. Dr. Newman concluded that it was not an industrial injury but possibly a recurrence of cancer and referred her to her oncologist.

By decision dated August 24, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that appellant had not established that the alleged incident occurred in the time, place and manner alleged or that she sustained a employment-related medical condition.

In a report dated July 27, 1995, Dr. Karen Jakpor, a Board-certified gynecologist, discussed appellant's history of cervical cancer, diagnosed a small vaginal erosion and referred her to Dr. Wattring.

In a report dated August 23, 1995, Dr. Guy H. Gottschalk, who specializes in occupational medicine and rheumatology, found that appellant was totally disabled due to a pelvic problem and cervicothoracic sprain/strain.

In a report dated September 12, 1995, Dr. Jakpor related that she treated appellant on July 27, 1995 for complaints of vaginal bleeding. Dr. Jakpor stated that appellant "told me that she sustained some kind of 'muscle pull' and since that time she has had intermittent vaginal bleeding and pain." Dr. Jakpor related that she diagnosed a stenotic vagina with a small abrasion and referred her to an oncologist to make sure she did not have recurrent cancer.

A computerized tomography (CT) scan revealed that appellant did not have a recurrence of cancer.

In a report dated September 28, 1995, Dr. Gottshalk related that he initially treated appellant on July 26, 1995 and diagnosed cervicothoracic spine and shoulder strain/sprain and an abdominal wall strain with no recurrent cancer. He stated:

> "[Appellant] had a preexisting radiation therapy for cervical cancer. She had been asymptomatic in terms of vaginal bleeding until the abdominal strain occurred. This was part of her abdominal and thoracic strain as a result of the jerking twisting injury occurring July 24, 1995."

Dr. Gottshalk found that appellant was totally disabled and recommended physical therapy.

By letter dated October 11, 1995, appellant requested reconsideration of her claim.

In a telephone conference between the Office and appellant, appellant again described her injury as occurring when Ms. Chancellor grabbed the door that she was in the process of shutting and pulled it open and then pushed it shut. Appellant related that she "immediately felt a sharp pain in her abdomen" and spoke to Ms. Ella Green, a secretary and described what had happened. Appellant related that her stomach continued to hurt and that she began vaginal bleeding. Appellant stated that the next day she continued to bleed and that a supervisor took her to an employing establishment physician. Appellant denied seeing Dr. Newman. Appellant stated that she did not mention the work injury to Drs. Jakpor and Fuller because she was worried about the possibility that her cancer had recurred. Appellant stated that she was diagnosed with a vaginal tear which will require surgical repair.

In a statement dated October 27, 1995, Ms. King related, "In my observation from inside the office Ms. Chancellor did not swing the door open although I did see her make contact with the door before it was fully closed." Ms. King further stated that appellant waited an hour and a half before informing her of the incident.

In a November 7, 1995 telephone conference, between the Office and Ms. Chancellor, Ms. Chancellor related that appellant had let go of the door knob before she grabbed the handle of the door.

By decision dated December 4, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. In the accompanying memorandum to the Director, incorporated by reference, the Office found that "the report from Dr. Gottschalk is *prima facie* sufficient to establish the medical component of fact of injury." The Office found, however, that appellant had not established the her injury occurred in the time, place and manner alleged.

By letter dated June 24, 1996, appellant, through her representative, requested reconsideration.

In a July 15, 1996 telephone conference Ms. McMillan, a supervisor at the employing establishment, related that she held a meeting between appellant and Ms. Chancellor but that both parties remained adamant in their respective positions. Ms. McMillan stated that Ms. Chancellor did not apologize to appellant during the meeting.

By decision dated July 22, 1996, the Office, in a merit decision, denied appellant's request for reconsideration.

The Board finds that appellant has established the occurrence of the July 24, 1995 employment incident.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[1] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[2] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[3] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[4] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[5]

[1] *See Elaine Pendleton*, 40 ECAB 1142 (1989).

[2] *Charles B. Ward*, 38 ECAB 667 (1989).

[3] *Tia L. Love*, 40 ECAB 586 (1989).

[4] *Merton J. Sills*, 39 ECAB 572 (1988).

[5] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

In the present case, the Office found that fact of injury was not established because there was conflicting evidence regarding whether the claimed incident occurred at the time, place and in the manner alleged. Appellant contended that she experienced pain in her abdominal area accompanied by bleeding after Ms. Chancellor grabbed the handle of a door, which she was pulling shut and "slung" it open. Appellant's supervisor, Ms. King, related that appellant informed a coworker and herself of the incident within two hours and sought medical treatment the next day. In the initial medical report of record, dated July 25, 1995, Dr. Newman stated that appellant related that she was injured holding onto a door knob when "a supervisor pulled the door open rapidly." In a report dated July 27, 1995, Dr. Jakpor, a Board-certified gynecologist, did not discuss the history of injury. In a report dated September 12, 1995, Dr. Jakpor stated that on July 27, 1995 appellant informed her that she had sustained a muscle pull with subsequent bleeding and pain. Appellant, however, has reasonably explained her failure to describe the incident to Dr. Jakpor as due to her fear that her cervical cancer had recurred.

Ms. Chancellor denied that she touched the door handle before appellant had released it on the other side. Ms. King indicated that Ms. Chancellor made contact with the door handle before appellant had finished shutting it but did not open the door after grabbing the handle. Appellant's account of the incident has been strongly contested by the employing establishment and the evidence establishes that the incident may not have occurred exactly as described by appellant. However, appellant has consistently alleged that she sustained an injury on July 24, 1995 when Ms. Chancellor grabbed the handle of a door she was shutting and a statement of a witness supports that Ms. Chancellor seized the door handle before the door was shut. Appellant further timely reported the injury on July 24, 1995, sought medical treatment on July 25, 1995 and stopped work on July 26, 1995. Her general course of action thus lends credence to her claim and the Board finds that the conflicting evidence is not sufficient to cast serious doubt on the validity of her claim. The Board, therefore, finds that the July 24, 1995 incident occurred at the time, place and in the manner alleged.

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[6]

In the instant case, the Office found that Dr. Gottshalk's September 28, 1995 report was *prima facie* sufficient to establish that appellant sustained an injury due to the July 24, 1995 incident. The Board, however, finds that the report of Dr. Gottshalk, while supportive of appellant's claim, is not sufficiently rationalized to meet her burden of proof. The case, therefore, will be remanded to the Office for further development of the medical evidence. On remand the Office should prepare a statement of accepted facts, which includes a description of the July 24, 1995 employment incident and refer appellant, together with the case record and statement of accepted facts, to an appropriate medical specialist. After such further development as is necessary, the Office should issue an appropriate decision on appellant's claim for benefits.

[6] *John M. Tornello*, 35 ECAB 234 (1983).

The July 22, 1996 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
October 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member